

Senate Bill No. 59

Passed the Senate August 29, 2006

Secretary of the Senate

Passed the Assembly August 22, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12001 of, and to add Section 12043 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 59, Lowenthal. Firearms: loss and theft.

Existing law defines “firearm” and provides that for certain purposes, including certain offenses, “firearm” includes the frame or receiver of the weapon.

This bill would provide that the term “firearm” includes the frame or receiver of the weapon for purposes of the offense of failure to report a stolen or lost firearm.

Existing law generally regulates the possession of firearms.

This bill would make it an infraction for any person whose handgun is stolen or irretrievably lost to fail, within 5 working days after his or her discovery or knowledge of, or within 5 working days after the date he or she should reasonably have known of, the theft or loss, to report the theft or loss to a local law enforcement agency of the jurisdiction in which the theft or loss occurred or in which the person resides. The bill would require specified notices of this requirement to persons acquiring handguns after July 1, 2007, as specified. The bill would provide that local governments are not prohibited from enacting ordinances imposing reporting requirements that are more strict than those specified in the bill. The bill would require the Attorney General, in cooperation with law enforcement agencies and firearms related organizations to develop a protocol for the implementation of these provisions, as specified, on or before April 1, 2007.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12001 of the Penal Code is amended to read:

12001. (a) (1) As used in this title, the terms “pistol,” “revolver,” and “firearm capable of being concealed upon the person” shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(2) As used in this title, the term “handgun” means any “pistol,” “revolver,” or “firearm capable of being concealed upon the person.”

(b) As used in this title, “firearm” means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12043, 12070, 12071, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term “firearm” includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term “firearm” also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12043, 12070, 12071, and paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term “firearm” does not include an unloaded firearm that is defined as an “antique firearm” in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a “handgun,” “pistol,” “revolver,” or “firearm capable of being concealed upon the person” from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term “BB device” means any instrument that expels a projectile, such as a

BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun.

(h) As used in this title, “wholesaler” means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

“Wholesaler” shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071 or 12072, “application to purchase” means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be “loaded” whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, 12101, and 12801 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term “any firearm” may be used in those sections, each firearm or the frame or receiver of

the same shall constitute a distinct and separate offense under those sections.

(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a "personal handgun importer" means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a handgun.

(5) He or she acquired that handgun outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that handgun within this state on or after January 1, 1998.

(8) The handgun was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that handgun to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The handgun is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The handgun is not an assault weapon, as defined in Section 12276 or 12276.1.

(12) The handgun is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the Armed Forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

(p) As used in this code, “basic firearms safety certificate” means a certificate issued by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, prior to January 1, 2003.

(q) As used in this code, “handgun safety certificate” means a certificate issued by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or after January 1, 2003.

(r) As used in this title, “gunsmith” means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who is engaged primarily in the business of repairing firearms, or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

SEC. 2. Section 12043 is added to the Penal Code, to read:

12043. (a) Any person who acquires or reacquires ownership of a handgun, or who reports his or her ownership of a handgun to the Department of Justice on or after July 1, 2007, and thereafter the handgun is stolen or irretrievably lost, shall, within five working days after his or her discovery or knowledge of, or within five working days after the date he or she should reasonably have known of, the theft or loss, report the theft or loss to a local law enforcement agency of the jurisdiction in which the theft or loss occurred or in which the person resides.

(b) Any person who violates subdivision (a) is guilty of an infraction punishable as follows:

(1) For a first violation of this section, by a fine not to exceed one hundred dollars (\$100).

(2) For a second or subsequent violation of this section, by a fine not to exceed two hundred and fifty dollars (\$250).

(c) Any person who complies with subdivision (a) shall be immune from any civil liability for the illicit use or possession of the firearm occurring after the theft or loss. This subdivision shall not apply if the person had prior knowledge of the misconduct or was negligent with respect to the theft or loss of the firearm.

(d) No charge may be imposed for submitting a report pursuant to this section.

(e) The Department of Justice shall, in promulgating forms and reports pursuant to any provision of law that requires or allows a person to report his or her ownership of a handgun to the department, include information indicating the reporting requirements of this section.

(f) Commencing July 1, 2007, the licensee shall, at the time of delivering a handgun to a person acquiring ownership or to a person complying with the requirements of paragraph (2) of subdivision (f) of Section 12072, provide the person with a written notice of the requirements of this section in a format prescribed by the department. The licensee shall sign and date an affidavit in duplicate stating that the person receiving the handgun has been given the notice. The licensee shall additionally obtain the signature of the person receiving the handgun on the same affidavit. The licensee shall retain the original affidavit and provide the duplicate to the person receiving the handgun.

(g) Nothing in this section shall be construed to preempt an existing ordinance or to prevent a local government from enacting an ordinance, that imposes reporting requirements that are more strict than those specified in subdivision (a).

(h) Compliance with this section does not require that a person reporting a lost or stolen handgun report the make, model, and serial number of the handgun.

(i) The Attorney General, in cooperation with those law enforcement agencies and firearms related organizations as may choose to do so, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be completed on or before April 1, 2007.

(j) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law.

However, an act or omission punishable in different ways by this section and different provisions of this code shall not be punished under more than one provision.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2006

Governor